

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
Misuse of Internet Protocol (IP) Captioned	)	CG Docket No. 13-24
Telephone Service	)	
	)	
Telecommunications Relay Services and	)	
Speech-to-Speech Services for	)	
Individuals with Hearing and Speech	)	CG Docket No. 03-123
Disabilities	)	
	)	
OMB Review of Information Collection	)	OMB Control No. 3060-1053
Under the Paperwork Reduction Act	)	

**PAPERWORK REDUCTION ACT COMMENTS  
OF SORENSON COMMUNICATIONS, INC. and CAPTIONCALL, INC.**

Sorenson Communications, Inc. and its subsidiary CaptionCall, LLC (together, “CaptionCall”) hereby respond to the Federal Communications Commission’s (“FCC’s” or the “Commission’s”) request for Paperwork Reduction Act (“PRA”) comments with respect to information collection burdens imposed by the Commission’s IP CTS requirements.<sup>1</sup> The *PRA Public Notice* fails to provide sufficient information to determine for which information collections the Commission now seeks comment, as compared with the information collection that the Office of Management and Budget approved on April 30, 2013 in ICR Reference No. 201302-3060-011.<sup>2</sup> The *PRA Public Notice* is utterly insufficient to give notice of anything, and thus fails to meet any notice requirements of the Paperwork Reduction Act.

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<sup>1</sup> These comments respond to the notice published in the Federal Register seeking public comment on new information collection requirements. *See Information Collection Being Reviewed by the Federal Communications Commission*, Notice and Request for Comments, 78 Fed. Reg. 59025-26, September 25, 2013 (“*PRA Public Notice*”).

<sup>2</sup> *See* [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201302-3060-011](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201302-3060-011).

Moreover, to the extent the *PRA Public Notice* is seeking comment on the information collections contained in the Commission’s August 13, 2013 *Final Order* establishing new Internet protocol captioned telephone relay service (“IP Captioned Telephone Service” or “IP CTS”),<sup>3</sup> the *PRA Public Notice* erroneously claims no collection of personally identifiable information.<sup>4</sup> In the *Final Order*, the Commission “acknowledge[d] that data obtained for the purposes of IP CTS registration may include sensitive personal information.”<sup>5</sup> Indeed, it specifically requires collection not only of name, address and telephone number, but also of date of birth and the last four digits of the beneficiary’s Social Security Number.<sup>6</sup> Moreover, the *Final Order* requires collection of individual self-certifications of eligibility from each beneficiary, hearing health professional certifications for any beneficiary that received service prior to the effective date of the interim rules and who did not pay at least \$75 for their IP CTS equipment (if not obtained through a federal, state, or local governmental program), and physician certifications for individuals with cognitive or motor limitations that impair their

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<sup>3</sup> *Misuse of Internet Protocol (IP) Captioned Telephone Service, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-118 (released Aug 26, 2013); published at 78 Fed. Reg. 53684, August 30, 2013 (“*Final Order*”).

<sup>4</sup> Personally identifiable information (“PII”) is generally understood to be information such as an individual’s name, address, date of birth, or social security number that when used alone or when combined with other personal or identifying information, which is linked or linkable to a specific individual, can be used to distinguish or trace an individual’s identity. The federal government used the term “personally identifiable information” in 2007 in a Memorandum from the Deputy Director for Management, Office of Management and Budget (OMB) to the Heads of Executive Departments and Agencies, regarding *Safeguarding Against and Responding to the Breach of Personally Identifiable Information*, available at: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>. That usage now appears in U.S. standards such as the *NIST Guide to Protecting the Confidentiality of Personally Identifiable Information* (SP 800-122) available at: <http://csrc.nist.gov/publications/nistpubs/800-122/sp800-122.pdf>.

<sup>5</sup> *Final Order* ¶ 75.

<sup>6</sup> See 47 C.F.R. § 64.604(c)(9)(i).

ability to activate captions.<sup>7</sup> All of these require the collection and retention of substantial personally identifiable information. The *PRA Public Notice* neither accurately nor forthrightly addresses these collections, and it erroneously asserts “No [privacy] impact(s).”

CaptionCall supports the concept of beneficiary registration, including the provision of beneficiary name, address, and telephone number. It also supports the collection of self-certifications of eligibility and documentation of eligibility from hearing health professionals as reasonable steps to protect against ineligible use.<sup>8</sup> The requirement to collect date-of-birth and the last four digits of the beneficiary’s Social Security Number from each and every beneficiary, however, poses significant privacy risks and the Commission has not explained why such information must be collected or how it will be used; thus, this collection is unduly burdensome to consumers and providers.

In addition, as the Commission formulates its burden estimates, it must also include the burdens of determining which hearing health professionals or physicians may not execute third party certifications because of a “business, family or social relationship” with a TRS provider, “or any officer, director, partner, employee, agent, subcontractor, or sponsoring organization or entity.”<sup>9</sup> To implement these provisions, a provider must collect information from someone – the certifying hearing health professional or physician, the “officer, director, partner, employee, agent, subcontractor, or sponsoring organization or entity,” or both. The Commission has not

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<sup>7</sup> See 47 C.F.R. § 64.604(c)(9)(v)-(viii); 47 C.F.R. § 64.604(c)(10)(iv).

<sup>8</sup> CaptionCall believes that the “default off” requirement violates the Americans with Disabilities Act, particularly the requirement for functionally equivalent service. Thus, physician certifications of need for the “hardship exception” to permit “default on” captioning should not be required. CaptionCall also believes that other exceptions to “default off” were and are warranted and should have been adopted.

<sup>9</sup> See 47 C.F.R. §§ 64.604(c)(9)(vii)(A), 64.604(c)(10)(iv)(B).

explained from whom this information must be collected, but how the information is to be collected will greatly affect the magnitude of the burden. For Sorenson and CaptionCall alone, if this requires collection from each “officer, director, partner, employee, agent, subcontractor, or sponsoring organization or entity,” the number of potential respondents runs into the thousands of people, multiplied by the number of anticipated required updates. In addition, it is impossible to evaluate the scope of the information collection because the Commission has not defined “business,” “family,” or “social” relationships. Until the Commission defines these terms and from whom the information must be collected, it cannot properly estimate the information collection burdens as required by the Paperwork Reduction Act. Put differently, at least until narrowed and clarified, these vague but potentially expansive information collections are unduly burdensome.

## **I. BACKGROUND**

IP CTS is a service that “permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and to read captions of what the other party is saying.”<sup>10</sup> The Commission has recognized non-IP-based telephone captioning services as TRS (and thus eligible for compensation from the TRS Fund) for more than a decade,<sup>11</sup> and in 2007 it confirmed that IP CTS is also a form of TRS.<sup>12</sup>

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<sup>10</sup> 47 C.F.R. § 64.601(a)(12).

<sup>11</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 18 FCC Rcd. 16121, 16123-24 ¶ 7 (2003).

<sup>12</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 22 FCC Rcd. 379, 380 ¶ 1 (2007).

CaptionCall provides IP CTS by employing highly trained communications assistants (“CAs”) who generate captioning in real time through a combination of voice-recognition technologies and real-time typed corrections. CaptionCall’s CAs are able to hear only the hearing user’s side of the conversation, which helps prevent confusion as to whose voice to caption and also provides a certain measure of confidentiality since the CA does not need to hear both sides of the conversation to complete the job.

Virtually all of CaptionCall’s customers have at least one hearing aid or a cochlear implant—all of which indicate significant hearing loss.<sup>13</sup> The anecdotal experience of CaptionCall’s installation field staff suggests that the profile is similar for CaptionCall customers for whom the company does not yet have data.

CaptionCall’s customers are also substantially older on average than the population as a whole, meaning that logistical burdens imposed by regulations have a particularly pronounced impact. More than a third of CaptionCall customers are over 80 years old, and nearly two-thirds are over 70. Streamlined and straightforward registration and certification processes are critical for this demographic. CaptionCall believes that these demographic characteristics apply to other IP CTS providers’ customers.

## **II. THE COLLECTION OF DATE OF BIRTH AND LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER PRESENTS SIGNIFICANT PRIVACY CONCERNS WITHOUT OFFSETTING BENEFIT**

The *Final Order* fails to provide any rationale for collecting date of birth and last four digits of the Social Security Number from every hard-of-hearing user of IP CTS. At the outset, CaptionCall notes that the Commission did not identify or request comment on the collection of

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<sup>13</sup> See Letter from John T. Nakahata, Counsel, CaptionCall, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 13-24 at 3 (filed Dec. 19, 2012).

this specific information in the further notice of proposed rulemaking part of the *Interim Order*.<sup>14</sup> Consequently, such collection efforts were not subject to notice and comment as required under the Administrative Procedure Act.<sup>15</sup> More fundamentally, it is unclear what purpose the collection of this specific information will serve for IP CTS: the Commission did not provide in the *Final Order* any purpose served by the collection of date of birth and last four digits of a user's Social Security Number.

Presumably, this information might be used to ensure that if two IP CTS users living at the same address had the same name, that the provider had collected the required self-certification and any other documentation from each. That case, however, will be extremely rare. By itself, it cannot justify the collection of date of birth and Social Security Number from every IP CTS user, the vast majority of whom do not share a residence with any person with the same name. Yet by requiring providers to collect and retain this information, the Commission increases the risk of inadvertent disclosure of this personally identifying information. (This risk is severely magnified if the Commission then requires this information to be placed into the TRS-URD, as is proposed in the Further Notice of Proposed Rulemaking contained in the *Final Order*). Moreover, even if the Commission were attempting to address this rare circumstance, it could have addressed it simply by requiring collection of either "date of birth" or "last four digits of the Social Security Number" limited only to that edge case. It would not be necessary to mandate collection of both pieces of information.

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<sup>14</sup> See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-118 (released Jan. 25, 2013); published at 78 Fed. Reg. 8032, February 5, 2013 ("*Interim Order*").

<sup>15</sup> Administrative Procedure Act, 5 U.S.C. § 553.

Nor can this information be used to verify the identity of an IP CTS user during a phone call for the purpose of demonstrating individual user eligibility. As a threshold matter, there is no requirement today that IP CTS providers verify customer identity using the information collected at registration. Even if there were, it is also not the case that a failure to match user-provided information to a commercial database establishes that the user is ineligible, or not whom they say they are; for example, the commercial database could be wrong. Moreover, an IP CTS provider can determine if the IP CTS equipment used for a captioned call is associated with a registered user, but that fact alone cannot verify that the person who is actually making or receiving a captioned call using the IP CTS equipment is the registered user; it only verifies that the equipment is associated with a registered user.

Nor can the collection of this information be justified by the information collection requirements adopted in June 2013 for the TRS-URD.<sup>16</sup> That would skip two critical steps: first, the OMB has not yet approved the information required to be collected and placed in the TRS-URD for VRS, or the creation of the TRS-URD itself;<sup>17</sup> second, the Commission has not yet determined that IP CTS registration information should be placed in the TRS-URD.<sup>18</sup>

Furthermore, collection of this specific information cannot be justified by reference to Lifeline program requirements. In Lifeline, collection of this information could be justified because of the need to enforce the one account per household requirement for Lifeline program

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<sup>16</sup> See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82, ¶ 70 (released Jun 10, 2013).

<sup>17</sup> See *Information Collection Being Reviewed by the Federal Communications Commission*, Notice and Request for Comments, 78 Fed. Reg. 67146, November 8, 2013.

<sup>18</sup> *Final Order* ¶ 129. Reply comments are not even due on this until December 4, 2013.

participation.<sup>19</sup> But, the IP CTS rules do not place any limit on the number of qualified persons that can receive service in a given household or the number of IP CTS phones or phone numbers that an individual IP CTS user could have. Indeed, such restrictions would violate the ADA's requirement of functional equivalence. Lifeline is not analogous.

It is particularly important not to create added privacy and security risks for IP CTS users, who are predominantly elderly and tend to be less comfortable with technology.<sup>20</sup> The problems of identity theft are well documented, both by the FCC and other governmental and non-governmental entities.<sup>21</sup> The demographic of IP CTS users is heavily targeted by scams

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<sup>19</sup> See *Lifeline & Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd. 6656, 6709-11, ¶¶ 111-14, 6712, ¶ 120 (2012) ("Lifeline/Link Up Reform Order") (amending 47 C.F.R. § 54.410 to require, among other measures to reduce fraud, abuse, and waste in the Lifeline program, that eligible telecommunications carriers obtain initial and annual self-certifications by consumers, under penalty of perjury, establishing their eligibility for Lifeline support).

<sup>20</sup> Cf. Comments of Sorenson Communications, Inc. and CaptionCall, LLC, CG Docket Nos. 13-24 & 03-123, at 22 (Feb. 26, 2013).

<sup>21</sup> See, e.g., *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd. 8061 (2007) (strengthening FCC rules to respond to growing practice by third parties, mostly data brokers, to illegally obtain customer proprietary information from carriers through unauthorized access or misrepresentation). The FTC has issued tips to help people deal with email and social networking hacks, noting, for example, that more than 555 million records have been hacked since 2005, available at: <http://www.privatewifi.com/ftc-advises-consumers-on-dealing-with-hacked-email-or-social-networking-accounts/>; see also, Identify Theft Consumer Information, available at: <http://www.consumer.ftc.gov/features/feature-0014-identity-theft>; Givens, Beth. Written testimony to Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information; Identity Theft: How It Happens, Its Impact on Victims, and Legislative Solutions, Hearing, Jul 12, 2000, available at: [https://www.privacyrights.org/AR/id\\_theft.htm](https://www.privacyrights.org/AR/id_theft.htm); Janine Benner, CALPIRG, Beth Givens, Privacy Rights Clearinghouse, and Ed Mierzwinski, USPIRG, *Nowhere to Turn: Victims Speak Out on Identify Theft – A Survey of Identity Theft Victims and Recommendations for Reform*, May 1, 2000, available at: <https://www.privacyrights.org/ar/idtheft2000.htm>; Kukil Bora, Michelle Obama And Other Public Figures' Private Data Hacked From Data Broker Giants, INT'L BUS. TIMES, Sept. 27, 2013, available at: <http://www.ibtimes.com/michelle-obama-other-public-figures-private-data-hacked-data-broker-giants-1411760>.

designed to exploit the cognitive limitations of age, and is much more likely to lose money to such frauds.<sup>22</sup> Were a database of users compiled by an IP CTS provider (or the FCC through the TRS-URD) compromised by hackers, this particular data would be a treasure trove for those who prey on the elderly. The mere incantation of hypothetical and speculative “waste, fraud and abuse” cannot outweigh the significant privacy risks, given that users already demonstrate eligibility by self-certifying about their hearing loss and need for IP CTS.

Given the sensitivity of this information and, at best, the marginal utility of gathering it, the Commission should comply with the Paperwork Reduction Act by eliminating the requirement to collect date of birth and social security number for every IP CTS user.

### **III. THE *FINAL ORDER* DOES NOT CONTAIN ENOUGH SPECIFICITY TO ESTIMATE THE INFORMATION COLLECTION BURDENS OF IDENTIFYING WHICH RELATIONSHIPS WOULD DISQUALIFY A THIRD-PARTY PROFESSIONAL FROM PROVIDING CERTIFICATIONS**

The *Final Order* allows third-party professional certifications in two contexts: (1) confirming the eligibility of providers’ existing customers who did not pay at least \$75 for IP CTS equipment;<sup>23</sup> and (2) certifying need for a “hardship exemption” to the default-off captioning requirement.<sup>24</sup> The rules with respect to these certifications prohibit independent third-party professionals who have a “business, family or social relationship with the TRS provider” from making certifications. Therefore, to ensure full compliance with these rules, providers will have to make efforts to determine which professionals cannot provide third-party

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<sup>22</sup> See Applied Research & Consulting, Inc., *Financial Fraud and Fraud Susceptibility in the United States*, Research Report from a 2012 National Survey Prepared for the FINRA Investor Education Foundation, at 3 (Sept. 2013) (“Older Americans are particularly vulnerable. Americans age 65 and older are more likely to be targeted by fraudsters and more likely to lose money once targeted.”).

<sup>23</sup> 47 C.F.R. § 64.604(c)(9)(v)-(viii).

<sup>24</sup> 47 C.F.R. § 64.604(c)(10)(iv).

certifications. But the *Final Order* and rules as written are unclear as to what information collections are required to implement these prohibitions against certain certifications, as well as completely vague as to which “business, family or social relationships” would disqualify a provider from issuing certifications. Without further guidance, these provisions present providers with an impossible information collection burden.

**A. How Providers Are Permitted to Implement the Exclusion from Certification – Which is Not Clear – Directly Affects the Paperwork Burden Analysis and Estimate.**

While not express, the requirement that providers exclude hearing health professionals or physicians with a “business, family or social relationship with the TRS provider” from providing certifications on which the provider would rely requires an information collection of some type. CaptionCall will have to collect and retain information as to whether a provider has a proscribed relationship. Assuming an adequate set of definitions of such relationships (discussed further below), CaptionCall can do that either by collecting information from the certifying hearing health professional/physician, or from its “officer[s], director[s], partner[s], employee[s], agent[s], subcontractor[s], or sponsoring organization[s] or entit[ies].”

If an IP CTS provider is permitted to rely on the good faith certification of a hearing health professional/physician, then the burden will be lower. The IP CTS provider could then include a box on the third party certification form for the third party professional to check to attest that they had no “business, family or social relationship” with the TRS provider or its “officer[s], director[s], partner[s], employee[s], agent[s], subcontractor[s], or sponsoring organization[s] or entit[ies].”

If, however, the Commission envisions that the IP CTS provider would have an affirmative obligation to obtain this information from each of its “officer[s], director[s], partner[s], employee[s], agent[s], subcontractor[s], or sponsoring organization[s] or entit[ies],”

the information collection and retention burden will be significantly higher. Once the proscribed relationships are adequately defined, a provider would have to survey all of its “officer[s], director[s], partner[s], employee[s], agent[s], subcontractor[s], or sponsoring organization[s] or entit[ies],” as to any hearing health professionals or physicians with whom those “officer[s], director[s], partner[s], employee[s], agent[s], subcontractor[s], or sponsoring organization[s] or entit[ies]” have a proscribed relationship. For Sorenson alone, that would require responses from thousands of individuals, and it could be many times larger if Sorenson were part of a much larger company – as is the case with Sprint. That information would have to be stored and periodically updated. In order to ensure consistency from period to period, the IP CTS provider may have to retain this information in a way that links the identified third party professionals with that identifying ““officer[s], director[s], partner[s], employee[s], agent[s], subcontractor[s], or sponsoring organization[s] or entit[ies].” This could reveal personally identifying information or other sensitive information if inadvertently disclosed or stolen.

Moreover, given the broad scope of persons whose business, family or social relationships need to be catalogued, *i.e.*, extending beyond just management or IP CTS-related employees, but to other employees, and even contractors and their employees, it will likely be impossible for any IP CTS provider to compile an error-free list. Furthermore, given how quickly business and social relationships typically arise, it is nearly impossible to keep an accurate, up-to-date list. It would be arbitrary and capricious for the Commission to require more than a reasonable effort to comply, even once providers have notice as to the actual scope of the health professionals to be excluded.

The Commission thus cannot properly evaluate the information collection burdens pursuant to the Paperwork Reduction Act until it has provided compliance guidance as to the IP

CTS provider's duties with respect to implementing the "business, family or social relationship" exclusion from third party professional certifications. The Commission should therefore provide such guidance, and then incorporate that guidance into its burden estimates. If the Commission fails to do so, it cannot comply with the Paperwork Reduction Act.

**B. The Scope of Proscribed "Business, Family or Social" Relationships is Not Clear Enough to Permit Compliance, and Thus to Enable an Estimate of the Information Collection Burden.**

**1. "Business" Relationships**

The rule does not define a "business" relationship. It is impossible to tell what conduct, beyond having a contractual agreement with a provider, qualifies as a "business" relationship. Notably, the *Interim Order* provided a still-ambiguous exclusion of professionals who have a "business agreement" with an IP CTS provider. CaptionCall urges the Commission to issue guidance to interpret this provision to preclude third-party certifications from hearing health professionals who have an effective written or unwritten contractual agreement with the IP CTS provider, akin to the "business agreement" standard under the *Interim Order*. In the absence of such guidance, it is simply impossible to know where to draw a line. Indeed, it is difficult to list examples of a "business relationship" that is not founded in a written or unwritten, express or implied, contract. It surely is not meant to be as broad as membership in the same local Chamber of Commerce or professional association, or as making an educational visit to an audiologist.

**2. "Family" Relationships**

The Commission has not defined "family," nor provided sufficient notice as to the definition of "family relationship." From the standpoint of excluding third-party certifications from being third party professional certifiers, should "family" be limited to an immediate family member (current spouse, current legally-recognized domestic partner, child, current siblings or

parent) who is an officer, director, partner, employee, or agent of the applicable IP CTS provider? CaptionCall urges the Commission to give providers guidance regarding how far down various family trees or through ex-spousal (or ex-step-sibling) relationships they must investigate before accepting third-party certifications. Is a cousin “family”? What about a second or a fourth cousin? What about an ex-spouse?

### **3. “Social” Relationships**

CaptionCall submits that, as written, it is impossible for providers to determine what “social” relationships the Commission intends to prohibit, as the Commission did not define “social.” This provision raises countless questions, such as: How much “social” contact is required? What if a hearing-health professional and employee of an IP CTS provider are members of the same social organization? Or go to the same church? Or were once friends but have not spoken in some number of months? Or have spoken in passing at an industry conference? Or dated—perhaps only once or twice or perhaps “seriously”? And when is a “social relationship” deemed to be over and thus no longer cognizable for the purposes of the certification rule? It is simply impossible for providers to know which professionals must be excluded from providing certifications because of “social” relationships. CaptionCall cannot determine any way to implement this provision as the rule has been drafted, and has no notice, actual or constructive, as to what the prohibition on certification by a hearing health professional with a “social relationship” with a CaptionCall officer, director, partner, employee or agent encompasses. CaptionCall urges the Commission to offer further guidance as to the definition of “social relationship.”

The Commission cannot reasonably calculate its information collection burdens without additional guidance. It should provide such guidance forthwith, so that the information collection burdens can be properly assessed.

#### IV. CONCLUSION

For the reasons described, the Commission must recognize that the information collections mandated in the *Final Order* require the collection of personally identifiable information that have privacy impacts, and that the requirement to collect date of birth and last four digits of the Social Security Number from every IP CTS user is unnecessary and unreasonably burdens consumer privacy and providers. In addition, the Commission must provide additional guidance with respect to implementation of the “business, family or social relationship” exclusion from independent third party professional certifications, and that whatever procedures it contemplates must be included as part of its Paperwork Reduction Act burden estimates – and are themselves subject to review and approval under the PRA.

Respectfully submitted,



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John T. Nakahata  
Randall W. Sifers  
Walter E. Anderson  
**WILTSHIRE & GRANNIS, LLP**  
1200 Eighteenth Street, NW  
Suite 1200  
Washington, DC 20036  
(202) 730-1300  
Counsel for Sorenson Communications, Inc.  
and CaptionCall, LLC

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